

HOUSE BILL No. 1374

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6-12; IC 27-1; IC 34-30-2-3.5; IC 35-43-5-4.

Synopsis: Insurance fraud division. Creates the insurance fraud division within the office of the attorney general to investigate and take action concerning suspected insurance fraud. Requires insurers and insurance professionals to report suspected insurance fraud. Establishes the insurance fraud investigation fund.

Effective: July 1, 2002.

Smith M

January 15, 2002, read first time and referred to Committee on Insurance, Corporations and Small Business.

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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1374

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-12 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2002]:

4 **Chapter 12. Insurance Fraud Division**

5 **Sec. 1. As used in this chapter, "department" refers to the**
6 **department of insurance created under IC 27-1-1-1.**

7 **Sec. 2. As used in this chapter, "division" refers to the insurance**
8 **fraud division created under section 14 of this chapter.**

9 **Sec. 3. As used in this chapter, "insurance fraud" means an act**
10 **committed or attempted by a person who knowingly and**
11 **intentionally, with intent to deprive another person of property or**
12 **to achieve pecuniary gain, participates in, aids, abets, conspires,**
13 **solicits, or allows the commission of one of the following:**

14 **(1) The preparation or presentation, by or on behalf of an**
15 **insured, a claimant, or a person submitting an application to**
16 **an insurer, an insurance professional, or a premium finance**
17 **company in connection with an insurance transaction or a**

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premium finance transaction, of information that contains a false representation of a material fact or that withholds or conceals a material fact concerning:

(A) an application for, the rating of, or the renewal of an insurance policy;

(B) a claim for payment of a benefit under an insurance policy;

(C) a payment made under the terms of an insurance policy; or

(D) an application used in a premium finance transaction.

(2) The preparation or presentation, to or by an insurer, an insurance professional, or a premium finance company in connection with an insurance transaction or a premium finance transaction, of information that contains a false representation of a material fact or that withholds or conceals a material fact concerning:

(A) a solicitation for the sale of an insurance policy or a purported insurance policy;

(B) an application for a certificate of authority under IC 27;

(C) the financial condition of an insurer; or

(D) the acquisition, formation, merger, affiliation, or dissolution of an insurer.

(3) The solicitation or acceptance of new or renewal insurance risks by or for an insolvent insurer.

(4) The removal of the assets or a record of the assets, transactions, and affairs of an insurer from the home office or other place of business of the insurer.

(5) The destruction or concealment from the department of:

(A) the assets; or

(B) a record of the assets, transactions, and affairs; of an insurer.

(6) The diversion, misappropriation, conversion, or embezzlement of funds of an insurer, an insured, a claimant, or an applicant for insurance in connection with:

(A) an insurance transaction;

(B) the conduct of business activities of an insurer or insurance professional; or

(C) the acquisition, formation, merger, affiliation, or dissolution of an insurer.

Sec. 4. As used in this chapter, "insurance policy" means any of the following:

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(1) A contract or an agreement by which one (1) party, for consideration, agrees to:

(A) indemnify or render a service to another party upon the occurrence of specified circumstances, including destruction, loss, or injury of something in which the other party has a pecuniary interest; or

(B) become security to another party against a loss caused by specified risks.

(2) A health maintenance organization contract.

(3) A limited service health maintenance organization contract.

Sec. 5. As used in this chapter, "insurance producer" has the meaning set forth in IC 27-1-15.6-2.

Sec. 6. As used in this chapter, "insurance professional" refers to the following:

(1) An insurance producer.

(2) A managing general agent (as defined in IC 27-1-33-4).

(3) An insurance broker.

(4) An insurance adjuster.

(5) An administrator (as defined in IC 27-1-25-1).

Sec. 7. As used in this chapter, "insurance transaction" means a transaction between:

(1) an insurer or an agent of an insurer; and

(2) an insured, a claimant, an applicant for an insurance policy, a public adjuster, an insurance professional, a practitioner, or an agent of an insured, claimant, applicant for an insurance policy, public adjuster insurance professional, or practitioner;

through which coverage under an insurance policy is purchased, an insurance premium is calculated, a claim is submitted, negotiated, or adjusted, or a benefit under an insurance policy is obtained.

Sec. 8. As used in this chapter, "insured" means a person that is covered under an insurance policy.

Sec. 9. As used in this chapter, "insurer" means a company, a firm, a partnership, an association, an order, a society, or a system that issues an insurance policy. The term includes:

(1) an association operating as:

(A) Lloyds;

(B) a reciprocal or an interinsurer; or

(C) an individual underwriter;

(2) a health maintenance organization; or



(3) a limited service health maintenance organization.

Sec. 10. As used in this chapter, "person" has the meaning set forth in IC 27-1-2-3.

Sec. 11. As used in this chapter, "practitioner" means a person that provides services in Indiana that are compensated directly or indirectly under an insurance policy.

Sec. 12. As used in this chapter, "premium finance company" means a person that advances money in a premium finance transaction.

Sec. 13. As used in this chapter, "premium finance transaction" means a transaction between an insured or the agent of an insured and a person in which the person directly or indirectly advances money to an insurer or insurance producer only in payment of a premium for an insurance policy:

(1) at the request of the insured; and

(2) according to the terms of an agreement under which the insured assigns to the person the insured's interest in unearned premiums, accrued dividends, or loan payments as security for the advance.

The term does not include the financing of premiums for an insurance policy purchased in connection with the financing of goods or services.

Sec. 14. The insurance fraud division is created within the office of the attorney general.

Sec. 15. The division has the following powers and duties:

(1) To initiate inquiries, conduct investigations, and respond to information received from the following concerning suspected insurance fraud:

(A) State and local police departments and other law enforcement agencies.

(B) Governmental units.

(C) Insurers.

(D) Insurance producers.

(E) Other persons.

(2) To conduct independent review of suspected insurance fraud, including:

(A) studies to determine the extent of:

(i) insurance fraud;

(ii) deceit; and

(iii) intentional misrepresentation;

related to insurance; and

(B) publication of information and reports on results of the

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independent review.

(3) To report incidents of alleged insurance fraud to:

(A) law enforcement authorities; and

(B) administrative, regulatory, and licensing agencies.

(4) To assemble evidence, prepare charges, and otherwise assist in the prosecution of alleged insurance fraud.

(5) To employ investigators.

(6) To administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the division considers necessary to an investigation under this chapter.

(7) To execute arrest warrants and search warrants related to criminal violations established as a result of an investigation under this chapter.

(8) To designate a representative to secure evidence, documentation, or related materials relevant to an investigation if the evidence, documentation, or related materials are located outside Indiana.

Sec. 16. State law that applies to law enforcement officers in Indiana applies to investigators employed under section 15(5) of this chapter.

Sec. 17. (a) Except as provided in subsection (b), information obtained under this chapter, including:

(1) papers;

(2) records;

(3) documents;

(4) reports;

(5) materials; or

(6) other evidence;

is confidential until the information is needed for a prosecution resulting from an investigation of alleged insurance fraud under this chapter.

(b) Information described in subsection (a) that:

(1) contains information identifying an individual; and

(2) is obtained or prepared by the division in anticipation of a civil or criminal proceeding;

is confidential and is not subject to subpoena, discovery, or disclosure in another civil action until the civil or criminal proceeding referred to in subdivision (2) is concluded.

(c) An investigator employed by the division under section 15 of this chapter is not required to testify in a civil action concerning a

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1 matter about which the investigator has knowledge due to an
 2 investigation under this chapter.

3 (d) This section does not:

- 4 (1) modify a legal privilege that applies to information
- 5 obtained by the division under this chapter; or
- 6 (2) authorize the division to publicize proprietary insurer
- 7 records.

8 Sec. 18. (a) An insurer or insurance professional that reasonably
 9 believes that insurance fraud has occurred or is likely to occur
 10 shall:

- 11 (1) inform the division; and
- 12 (2) cooperate with an investigation conducted under this
- 13 chapter.

14 (b) A person that:

- 15 (1) reasonably believes that insurance fraud has occurred or
- 16 is likely to occur; or
- 17 (2) collects, reviews, or analyzes information concerning
- 18 insurance fraud;

19 may disclose information in the person's possession concerning
 20 suspected insurance fraud to the division or to an agent of an
 21 insurer that requests the information for the purpose of detecting,
 22 prosecuting, or preventing insurance fraud.

23 Sec. 19. If an insurer that reasonably believes that insurance
 24 fraud has occurred in connection with an insurance claim informs
 25 the division of the suspected insurance fraud, the notice to the
 26 division tolls the running of any period specified in a law under
 27 which a claim may be filed alleging that the insurer has committed:

- 28 (1) an unfair claim settlement practice;
- 29 (2) an unfair or deceptive act or practice in the business of
- 30 insurance; or
- 31 (3) another bad faith action;

32 in the settlement of the insurance claim, for a period ending thirty
 33 (30) days after the division notifies the insurer that the division will
 34 not recommend further action on the suspected insurance fraud.

35 Sec. 20. The division may, in cooperation with insurers and
 36 insurance professionals, establish a voluntary fund to award a
 37 person who:

- 38 (1) is not connected with the insurance industry; and
- 39 (2) provides information that leads to an arrest and a
- 40 conviction for insurance fraud.

41 Sec. 21. (a) A person who:

- 42 (1) provides information to or requests information from the

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1 division; or

2 (2) complies with a court order to provide evidence or
3 testimony concerning suspected insurance fraud;

4 is not liable in a cause of action arising from the activities
5 described in subdivision (1) or (2) unless the person acts with
6 actual malice, commits perjury, or commits insurance fraud.

7 (b) A person who is employed or authorized by an insurer to
8 investigate or report suspected insurance fraud is not liable in a
9 cause of action arising from the person's:

10 (1) provision of information to; or

11 (2) request for information from;

12 another person employed or authorized by an insurer to investigate
13 or report suspected insurance fraud unless the person acts with
14 actual malice, commits perjury, or commits insurance fraud.

15 (c) An employee or agent of the division who:

16 (1) provides information to or requests information from a
17 person concerning suspected insurance fraud; or

18 (2) publishes information related to the official activities of
19 the division in accordance with this chapter;

20 is not liable in a cause of action arising from the activities
21 described in subdivision (1) or (2) unless the employee or agent acts
22 with actual malice, commits perjury, or commits insurance fraud.

23 (d) A person:

24 (1) against whom a cause of action is brought for activities of
25 the person under this chapter; and

26 (2) who is immune from liability under this section;

27 may recover reasonable attorney's fees and costs from the party
28 bringing the action.

29 (e) This section does not modify other privileges or immunities
30 established by law.

31 Sec. 22. The expenses of the division, including salaries and costs
32 related to investigations conducted under this chapter, must be
33 paid from the insurance fraud investigation fund established under
34 section 23 of this chapter.

35 Sec. 23. (a) The insurance fraud investigation fund is established
36 to pay the expenses of the division. The fund shall be administered
37 by the division.

38 (b) The expenses of administering the fund shall be paid from
39 money in the fund.

40 (c) The insurance fraud investigation fund consists of money
41 received from insurers based on a formula established by the
42 division through which an insurer doing business in Indiana is

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1 charged an assessment based on the insurer's share of total
 2 premiums charged in Indiana for the types of insurance policies
 3 issued in Indiana by the insurer. An insurer upon which an
 4 assessment is imposed under this subsection shall pay the
 5 assessment.

6 (d) The treasurer of state shall invest the money in the insurance
 7 fraud investigation fund not currently needed to meet the
 8 obligations of the fund in the same manner as other public money
 9 may be invested.

10 (e) Money in the insurance fraud investigation fund at the end
 11 of a state fiscal year does not revert to the state general fund.

12 **Sec. 24.** A person who knowingly or intentionally interferes with
 13 the activities of the division under this chapter commits a Class A
 14 infraction.

15 **Sec. 25.** This chapter does not:

16 (1) preempt the authority of or relieve the duty of a law
 17 enforcement agency to investigate and prosecute alleged
 18 violations of law;

19 (2) prevent a person from providing information concerning
 20 insurance fraud to a law enforcement agency other than the
 21 division; or

22 (3) limit the power of the department under IC 27 to
 23 investigate and take action concerning violations of IC 27.

24 SECTION 2. IC 27-1-15.6-31.5 IS ADDED TO THE INDIANA
 25 CODE AS A NEW SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2002]: **Sec. 31.5.** An insurance producer that
 27 reasonably believes that insurance fraud (as defined in IC 4-6-12-3)
 28 has occurred or is likely to occur shall:

29 (1) inform the insurance fraud division created under
 30 IC 4-6-12-14; and

31 (2) cooperate with an investigation conducted under
 32 IC 4-6-12.

33 SECTION 3. IC 27-1-15.8-2, AS ADDED BY P.L.132-2001,
 34 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2002]: Sec. 2. The following provisions of IC 27-1-15.6 apply
 36 to licensure of surplus lines producers under this chapter:

37 (1) IC 27-1-15.6-5.

38 (2) IC 27-1-15.6-6.

39 (3) IC 27-1-15.6-8 through IC 27-1-15.6-13.

40 (4) IC 27-1-15.6-15 through IC 27-1-15.6-17.

41 (5) IC 27-1-15.6-21.

42 (6) ~~IC 27-1-15.6-32~~ **IC 27-1-15.6-31.5** through IC 27-1-15.6-34.



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SECTION 4. IC 27-1-20-35 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 35. An insurance company, an employee or agent of an insurance company, or a broker that reasonably believes that insurance fraud (as defined in IC 4-6-12-3) has occurred or is likely to occur shall:**

(1) inform the insurance fraud division created under IC 4-6-12-14; and

(2) cooperate with an investigation conducted under IC 4-6-12.

SECTION 5. IC 27-1-25-13.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 13.5. An administrator that reasonably believes that insurance fraud (as defined in IC 4-6-12-3) has occurred or is likely to occur shall:**

(1) inform the insurance fraud division created under IC 4-6-12-14; and

(2) cooperate with an investigation conducted under IC 4-6-12.

SECTION 6. IC 27-1-27-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 12. A public adjuster that reasonably believes that insurance fraud (as defined in IC 4-6-12-3) has occurred or is likely to occur shall:**

(1) inform the insurance fraud division created under IC 4-6-12-14; and

(2) cooperate with an investigation conducted under IC 4-6-12.

SECTION 7. IC 34-30-2-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 3.5. IC 4-6-12-21 (Concerning insurance fraud).**

SECTION 8. IC 35-43-5-4, AS AMENDED BY P.L.180-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 4. A person who:**

(1) with intent to defraud, obtains property by:

(A) using a credit card, knowing that the credit card was unlawfully obtained or retained;

(B) using a credit card, knowing that the credit card is forged, revoked, or expired;

(C) using, without consent, a credit card that was issued to another person;

(D) representing, without the consent of the credit card holder,



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1 that the person is the authorized holder of the credit card; or
 2 (E) representing that the person is the authorized holder of a
 3 credit card when the card has not in fact been issued;
 4 (2) being authorized by an issuer to furnish property upon
 5 presentation of a credit card, fails to furnish the property and, with
 6 intent to defraud the issuer or the credit card holder, represents in
 7 writing to the issuer that the person has furnished the property;
 8 (3) being authorized by an issuer to furnish property upon
 9 presentation of a credit card, furnishes, with intent to defraud the
 10 issuer or the credit card holder, property upon presentation of a
 11 credit card, knowing that the credit card was unlawfully obtained
 12 or retained or that the credit card is forged, revoked, or expired;
 13 (4) not being the issuer, knowingly or intentionally sells a credit
 14 card;
 15 (5) not being the issuer, receives a credit card, knowing that the
 16 credit card was unlawfully obtained or retained or that the credit
 17 card is forged, revoked, or expired;
 18 (6) with intent to defraud, receives a credit card as security for
 19 debt;
 20 (7) receives property, knowing that the property was obtained in
 21 violation of subdivision (1) of this section;
 22 (8) with intent to defraud the person's creditor or purchaser,
 23 conceals, encumbers, or transfers property;
 24 (9) with intent to defraud, damages property;
 25 (10) knowingly and with intent to defraud, makes, utters, presents,
 26 or causes to be presented to an insurer or an insurance claimant
 27 a claim statement that contains false, incomplete, or misleading
 28 information concerning the claim **or otherwise commits an act**
 29 **described in IC 4-6-12-3;** or
 30 (11) knowingly or intentionally:
 31 (A) sells;
 32 (B) rents;
 33 (C) transports; or
 34 (D) possesses;
 35 a recording for commercial gain or personal financial gain that
 36 does not conspicuously display the true name and address of the
 37 manufacturer of the recording;
 38 commits fraud, a Class D felony.

39 SECTION 9. [EFFECTIVE JULY 1, 2002] IC 35-43-5-4, as
 40 amended by this act, applies to offenses committed after June 30,
 41 2002.



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